

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2019-281-S - ORDER NO. 2020-431

JULY 6, 2020

IN RE: Application of Palmetto Utilities,)	ORDER RULING ON
Incorporated for Adjustment (Increase) of)	MOTION TO STRIKE
Rates and Charges, Terms and Conditions,)	AND DENYING
for Sewer Service Provided to Customers in)	IMPOSITION OF
Its Richland and Kershaw County Service)	SANCTIONS
Areas)	

This matter comes before the Public Service Commission of South Carolina (“the Commission”) on the Motion by Palmetto Utilities, Inc. (“PUI” or “the utility”) to Strike certain portions of the pre-filed direct testimony and exhibits of Office of Regulatory Staff’s (“ORS”) witnesses Charles E. Loy, Daniel P. Hunnell II, and Christina L. Seale. PUI also seeks sanctions. This Commission denies in part and grants in part the Motion to Strike and denies the Motion for Sanctions. This Order reflects the Commission Directive in this case of June 24, 2020, and may be subject to change by further order of the Commission.

The grounds for PUI’s Motion to Strike are that certain portions of the designated ORS pre-filed testimony reference or incorporate books, records, or other information were provided by the utility to ORS pursuant to S.C. Code Ann. Section 58-4-55(A).¹

¹ See Loy pre-filed Direct Testimony p. 6, l.2 – p. 7, l.22 and related footnotes 7, 8, and 9; p. 12, l.14 – p. 13, l.2 and related footnote 12; p. 18, ll.15 – 22, and proposed Exhibit CEL-7. See Hunnell pre-filed Direct Testimony p. 5, l.22 – p. 6, l. 3.; p.7, ll. 9-10; p.7, l.19 – p. 8, l.2; p. 8, ll. 15-19 and related footnote; p. 11, l.1 and Exh. DPH-7; p.12, ll. 1-6 and related footnote; p. 17, n.10; p. 19, ll. 9-15; p. 20, ll. 5-14; p. 22, ll. 3-5, and proposed Exhibits DPH 9, 10, and 11. See Seale pre-filed Direct Testimony p. 7, l. 22 – p. 8. l.17; p. 8, l.19 – p.9, l. 3; and p. 9, ll. 12-19.

According to PUI, the inclusion of such material in ORS testimony was improper disclosure to the Commission and public, and in violation of the statute. The utility argues that S.C. Code Ann. Section 58-4-55 requires that such information remain confidential unless or until the Commission rules such information is not entitled to protection from public disclosure, or the public utility agrees that such information is no longer confidential or proprietary. Under this Order, this Commission finds that the information described by PUI is not entitled to protection from public disclosure.

Clearly, the utility never designated the disputed information published in the ORS testimony as confidential in its filings, which is a requirement found in S.C. Code Ann. Section 58-4-55. Further, in *Utilities Services of South Carolina, Inc. v. South Carolina Office of Regulatory Staff*, 392 S.C. 96, 708 S.E.2d 755 (2011), the South Carolina Supreme Court, quoting S.C. Code Ann. Section 58-4-10, held that ORS “must represent the public interest of South Carolina before the Commission.” In the 2019 case, *Daufuskie Island Utility Company, Inc. v. South Carolina Office of Regulatory Staff*, 427 S.C. 458, 832 S.E.2d 572 (2019), the Court also held that the statutes governing the ORS require that agency to protect the public interest, to provide public utilities a fair rate application proceeding, and to make appropriate and reliable recommendations to the Commission in these types of proceedings. Based on the Court’s holdings in these two cases, the testimony and evidence under consideration addressed by Palmetto Utilities’ Motion to Strike is not entitled to confidential protection under S.C. Code Ann. Section 58-4-55.

ORS's statutory charge to protect the public interest dictates that the information from the utility's books and records be made available to the public and to the Commission, so that ORS can "make appropriate recommendations to the Commission with respect to the rates charged or proposed to be charged by any public utility." ORS must represent the public interest before the Commission, and striking the testimony referred to by the Company would seriously cripple the agency's ability to perform this function, especially since most of the information complained about by PUI is not what can normally be characterized as confidential. Most of the information complained of generally appears to be general audit information, commonly received during the audit process by ORS. Accordingly, the Company's Motion to Strike is denied.

The requested sanctions are also denied, including, but not limited to, costs of the Motion, attorney's fees, reimbursement of the amount that PUI paid Mr. Loy's employer on behalf of ORS pursuant to state law for this case, and the relief of further obligations to pay Mr. Loy's employer for his work on this case. Nothing in the statute provides for the imposition of any of the sanctions proposed by the utility. The imposition of sanctions is within the sound discretion of the Commission, and the Commission can discern no behavior by ORS in this case which merits sanctions.

PUI's motion to be allowed to file additional rebuttal testimony and exhibits, responsive to the portions of the direct testimonies and exhibits of ORS witnesses Loy, Hunnell, and Seale, is granted, however. Such testimony should be filed with the Commission and served on the parties by 4 pm on Friday, June 26, 2020. Since the filing of surrebuttal testimony is discretionary with the Commission, we also hold that no filing

of surrebuttal testimony be allowed. At the hearing, the parties will have the full right to cross-examine all witnesses who are allowed to testify, and to review any exhibits prior to such exhibits being placed into evidence.

Because of the findings contained herein, we reach the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. PUI has filed a Motion to Strike portions of the testimony of ORS witnesses Charles E. Loy, Daniel P. Hunnell II, and Christina L. Seale, which contain audit material obtained through PUI.

2. PUI has requested that various sanctions be imposed against ORS for alleged violation of the confidentiality provisions of S. C. Code Ann. Section 58-4-55 in prefilng the testimony of witnesses Loy, Hunnell, and Seale, containing, in PUI's view, confidential information. PUI argues that the testimony contains information obtained by ORS through provision of the books, records, and other materials and information receivedthrough the utility, which the utility believes is confidential under the stated statute. The materials are not confidential.

3. PUI has not designated the disputed testimony as confidential, until recently, in its Motion to Strike.

4. PUI has requested the ability to file additional rebuttal testimony, should the Commission not find that the disputed testimony was confidential and deny the Motion to Strike. Since the allowance of the filing of surrebuttal testimony is discretionary with the Commission, the utility requests that no filing of surrebuttal testimony be allowed.

CONCLUSIONS OF LAW

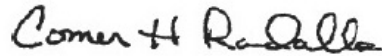
1. The Motion to Strike is denied in part and granted in part.
2. The information now described as confidential by PUI is not entitled to protection from public scrutiny, since it was not designated as such.
3. ORS is required to protect the public interest. ORS cannot carry out this and other mandated functions if audit information, such as the information under consideration in this case, must be protected from public scrutiny.
4. The information at issue was not designated as confidential under S.C. Code Ann. Section 58-4-55 until recently. ORS carried out its audit without such information being designated as confidential by PUI.
5. The material at issue is hereby designated as public information.
6. The imposition of sanctions is within the sound discretion of the Commission.
7. The use of the information at issue in this case in ORS testimony does not merit the imposition of sanctions.
8. PUI may file further rebuttal testimony and exhibits addressing the stated material in the testimonies of the three ORS witnesses.
9. The allowance of the filing of surrebuttal testimony is discretionary with the Commission.
10. The filing of surrebuttal testimony will be not be allowed in this case by responding parties.

CONCLUSION

The Motion to Strike certain sections of ORS pre-filed testimony and for Imposition of Sanctions is denied. PUI may file additional rebuttal testimony and exhibits related to the disputed sections of the direct testimony of ORS witnesses Charles E. Loy,

Daniel P. Hunnell II, and Christina Seale by 4 pm on Friday, June 26, 2020. The filing of additional surrebuttal testimony and exhibits by other parties will not be allowed. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Comer H. "Randy" Randall, Acting Chairman

ATTEST:



Florence P. Belser, Vice Chair